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ELIMINATE THE BLOOD REQUIREMENT IN FFD REGULATION

AFFIRMED RULE LANGUAGE:

§ 26.24(h):

"Further testing for alcohol must be through analysis of blood specimens, and must only be administered if requested by the individual for the purposes of obtaining additional information that could be considered during an appeal pursuant to § 26.28. Such a test must be a gas chromatography analysis."

Appendix A, Section 2.4(g)(19):

"If the alcohol breath tests indicates that the individual is positive for a BAC at or above the 0.04 percent cut-off level or that the individual may have been positive for a BAC at or above the 0.04 percent cut-off level during any scheduled working tour (i.e., has a confirmatory test result between 0.02 percent BAC and 0.04 percent BAC), the individual may request a blood test, at his or her discretion for the purpose of obtaining additional information that could be considered during an appeal. The blood specimen should be drawn immediately, if possible."

RECOMMENDATION:

Eliminate the regulatory authority to allow an alcohol-positive individual to request a blood test. Since proposed rule modifications are specifically intended to minimize FFD program subversion, the blood-testing loophole should be eliminated.

RATIONALE:

This requirement was originally established as an individual rights consideration, however, the Department of Transportation does not consider this to be necessary or appropriate in FFD programs under its cognizance. If an individual's breath test were confirmed positive in accordance with requirements, there would be no scientific doubt that the alcohol concentration in the individual's blood was correct as obtained by breathalyzer or the Department of Health and Human Services would require blood draws for all federal programs. A confirmed positive alcohol test result using the specified evidentiary grade breath testing equipment is the legally determined official test result. By authorizing voluntary blood drawing for CG/MS testing, the NRC regulation contradicts the premise that breathalyzers provide true and legal results.

Also, it is conceivable that an untrustworthy person could try to confuse the issue by attempting to exploit the inherent delays associated with a request for blood testing. Onsite

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personnel find it difficult and time consuming to obtain a blood specimen anytime a positive breath test result is obtained. Because a for-cause test may be called at any time of the day or night and knowing that alcohol in the blood metabolizes at an approximate rate of 0.015 BAC per hour, a licensee has to have a trained, qualified blood-drawing technician immediately available on site at all times. If other blood-drawing services (i.e., hospitals, clinics, etc.) are necessary, there may be significant delays. Although remote, there are other potentially serious ramifications outside of a hospital environment that must be considered: potential exposure to blood borne pathogens, HIV, Hepatitis B, etc.

Industry program results seem sufficient to show there has been no value added for this significant burden. Consider the following:

- In 1996, after five years under Part 26, one licensee had recorded 260 positive breath alcohol tests, with 71 requests for confirmatory blood test.
- In 2002, a large corporation advised that since 1991, 207,939 FFD tests were conducted with 151 blood draws
- At these companies no appeal for FFD violation reversed the breathalyzer result.

Rule language should minimize the potential for program subversion attempts. Even if there were no such attempts, significant resources are required to support this no-value-added collection capability. Authorizing an individual with the capability to distract attention from the real FFD program must not be perpetuated.

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